

ST 03-11

Tax Type: Sales Tax

**Issue: Gross Receipts
Interstate Commerce (Exemption Issue)**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

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|----------------------------------|---|--------------------------|---------------------|
| THE DEPARTMENT OF REVENUE |) | Docket Nos. | 00-ST-0000 |
| OF THE STATE OF ILLINOIS, |) | | 00-ST-0000 |
| |) | IBT No. | 0000-0000 |
| v. |) | NTL Nos. | 00-0000000000000000 |
| ABC CORPORATION d/b/a |) | | 00-0000000000000000 |
| FINE JEWELERS, |) | John E. White, | |
| Respondent |) | Administrative Law Judge | |

RECOMMENDATION FOR DISPOSITION

Appearances: Neal Feld appeared for ABC Corporation; Shepard Smith, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis: This matter arose after ABC Corporation (“ABC” or “taxpayer”) protested two Notices of Tax Liability (“NTL’s”) the Illinois Department of Revenue (“Department”) issued to it. Together, those NTL’s assessed retailers’ occupation tax (“ROT”) as measured by taxable gross receipts realized by taxpayer’s business during the months of January 1, 1994 through and including December 31, 1999.

The hearing was conducted at the Department’s offices in Chicago, Illinois. Pursuant to a pre-hearing order, the parties agreed that issues to be resolved at hearing included the propriety of assessments based on: taxpayer’s underreporting of its taxable gross receipts; the Department’s disallowance of deductions taxpayer claimed for sales in interstate commerce and for sales of bullion; and a late filing penalty. After considering

the evidence admitted at hearing, I recommend that all issues be resolved in favor of the Department.

Findings of Fact:

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission of the NTL's under the certificate of the Director. Department Ex. 1 (copies of corrections of returns and NTL's).
2. ABC conducts business as FINE Jewelry Store, located in Anywhere, Illinois. Department Ex. 1.
3. Following an audit of ABC's business for the months of January 1, 1994 through and including December 31, 1999, the Department corrected ABC's previously filed returns, and subsequently issued NTL's that together assessed ROT, a penalty and interest. Department Ex. 1.
4. At hearing, taxpayer offered no evidence to rebut the any of the Department's audit determinations. *See* Hearing Transcript ("Tr."), *passim*.

Conclusions of Law:

Pursuant to § 4 of the Retailers' Occupation Tax Act ("ROTA"), the Department's introduction of the NTL's it issued to ABC constitutes prima facie proof of the correctness of the amount of tax due. 35 ILCS 120/4. The Department's prima facie case is a rebuttable presumption. Copilevitz v. Department of Revenue, 41 Ill. 2d 154, 157, 242 N.E.2d 205, 207 (1968); DuPage Liquor Store, Inc. v. McKibbin, 383 Ill. 276, 279, 48 N.E.2d 926, 927 (1943). A taxpayer cannot overcome the presumption merely by denying the accuracy of the Department's assessment. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826, 833, 527 N.E.2d 1048, 1053 (1st Dist.

1988). Instead, a taxpayer has the burden to present evidence that is consistent, probable and closely identified with its books and records, to show that the assessment is not correct. Fillichio v. Department of Revenue, 15 Ill. 2d 327, 333, 155 N.E.2d 3, 7 (1958); A.R. Barnes & Co., 173 Ill. App. 3d at 833-34, 527 N.E.2d at 1053.

Here, taxpayer offered no evidence at hearing to rebut any of the Department's audit determinations. Tr., *passim*. No individual with personal knowledge took the stand to offer testimony on ABC's behalf, and more importantly, to offer documentary evidence to support its claim that the Department's determinations were wrong. Instead, counsel argued that taxpayer had already presented documentary evidence to the Department that supported certain deductions claimed on the returns filed during certain months, but that taxpayer did not have those documents to offer as evidence. Tr. pp. 6-7 (statement of counsel). Taxpayer's mere arguments, however, are not sufficient to rebut the presumptive correctness of the Department's determinations. Fillichio, 15 Ill. 2d at 333, 155 N.E.2d at 7; A.R. Barnes & Co., 173 Ill. App. 3d at 833-34, 527 N.E.2d at 1053. Taxpayer was obligated to offer documentary and other necessary evidence, at the hearing it requested, and it failed to do so here.

Conclusion:

I recommend that the NTL's be finalized as issued, with interest to accrue pursuant to statute.

Date: 6/27/2003

John E. White
Administrative Law Judge